

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 01-CR-30140-02-MJR
)	
EARNEST D'MARCO JOHNSON,)	
)	
Defendant.)	

MEMORANDUM and ORDER

REAGAN, District Judge:

By opinion dated August 16, 2005, the United States Court of Appeals for the Seventh Circuit directed a limited remand to this Court for proceedings consistent with *United States v. Paladino*, 401 F.3d 471 (7th Cir. 2005), after Defendant Earnest D'Marco Johnson (sentenced under the then-mandatory scheme of the U.S. Sentencing Guidelines) challenged his sentence under *United States v. Booker*, 543 U.S. 220 (2005). Specifically, this Court sentenced Johnson to 162 months imprisonment, which included a term of 78 months for the count of aggravated robbery and a term of 84 months for the count of using a firearm during the robbery. Now that the guidelines, post-*Booker*, are advisory, the case has been returned, so this Court can determine whether its sentence would be different.

Paladino instructs that, on limited remand, the sentencing judge must determine whether he would reimpose his original sentence. "If so, we will affirm the original sentence against a plain-error challenge provided that the sentence is reasonable, the standard of appellate review prescribed by *Booker*." If, "on the other hand, the judge states on limited remand that he would have imposed a different sentence had he known the guidelines were merely advisory," the Seventh

Circuit “will vacate the original sentence and remand for resentencing.” *Paladino*, 401 F.3d at 484.

In deciding whether to reimpose the original sentence, this Court solicited the views of counsel via written briefs and listened to oral argument and testimony¹ presented by the parties at a *Paladino* hearing held before this Court on December 2, 2005.

After considering the briefs, arguments of counsel, live testimony, Johnson’s pre-sentence report, co-defendant Seals’ pre-sentence reports, and the Court’s private notes, this Court now advises the Court of Appeals that this Court’s sentence would have been no different had Johnson been sentenced post-*Booker*.

IT IS SO ORDERED.

DATED this 7th day of December, 2005.

s/ Michael J. Reagan
MICHAEL J. REAGAN
United States District Judge

¹ Ernestine Sanai Johnson, sister of Earnest D’Marco Johnson, testified on his behalf.